



The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

OCT 19 2016

Dear Chairman Upton:

Thank you for your letter regarding the risk corridors program created by the Affordable Care Act (ACA). The Department of Health and Human Services (HHS or Department) has responsibility for this program and has implemented it through the Centers for Medicare & Medicaid Services (CMS) in accordance with the statute.

Section 1342 of the ACA directs the HHS Secretary to establish and administer a temporary risk corridors program that provides issuers of qualified health plans (QHPs) in the individual and small group markets additional protection against uncertainty in claims costs during the first three years of the Marketplace. This program, which was modeled in part after a similar program in the Medicare prescription drug benefit, was designed to encourage issuers to keep their rates stable as they adjusted to the new health insurance reforms in the early years of the Marketplaces.

You asked about how risk corridors obligations would be paid in the event of a shortfall of risk corridors collections. As the Department has previously stated, if risk corridors collections are insufficient to make risk corridors payments for a year, all risk corridors payments for that year will be reduced pro rata to the extent of any shortfall. Risk corridors collections received for the next year will first be used to pay off the payments owed from the previous year and then will be used to make current year payments. If, after obligations for the previous year have been met, the total amount of collections available in the current year is insufficient to make payments in that year, the current year payments will be reduced pro rata to the extent of any shortfall. If any risk corridors funds remain after prior and current year payment obligations have been met, they will be held to offset potential insufficiencies in risk corridors collections in the next year. In the event of a shortfall for the 2016 benefit year, HHS will explore other sources of funding for risk corridors payments, subject to the availability of appropriations. This includes working with Congress on the necessary funding for outstanding risk corridors payments.

As you mentioned in your letter, the risk corridors program is the subject of ongoing litigation against the United States. As you may be aware, the conduct of litigation in which the United States is a party is reserved to the Department of Justice (DOJ). We are aware of eight risk corridors lawsuits pending in the Court of Federal Claims. DOJ is vigorously defending those claims on behalf of the United States. The enclosed list of these lawsuits further supplements information previously provided to your staff, and we refer you to the pleadings filed in those matters for additional information.

You also asked for information regarding communications with DOJ about these lawsuits. As is the case in any attorney-client representation, it is standard practice for departments to communicate with DOJ regarding litigation in which DOJ represents the department. Finally, regarding examples of other instances when CMS has announced a willingness to settle pending claims, most recently, on September 28, CMS announced it would allow eligible providers to settle inpatient status claims using the Hospital Appeals Settlement Process.

Thank you for your interest in how HHS administers this program. Please let my staff know if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Jim R. Esquea". The signature is fluid and cursive, with the first name "Jim" being particularly prominent.

Jim. R. Esquea
Assistant Secretary for Legislation

cc: The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

The Honorable Leonard Lance
Member

The Honorable H. Morgan Griffith
Member

The Honorable Frank Pallone
Ranking Member

The Honorable Gene Green
Ranking Member
Subcommittee on Health

The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations

Enclosure

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Health Republic Ins. Co. v. United States, No. 16-259-MMS

(Fed. Cl. filed Feb. 24, 2016):

Plaintiff: HEALTH REPUBLIC INSURANCE COMPANY

(This case was filed against the United States as a putative class action on behalf of all issuers similarly-situated to Health Republic.)

First Priority Life Ins. Co., Inc. (Highmark) v. United States, No. 16-587-VJW

(Fed. Cl. filed May 17, 2016):

Plaintiffs: FIRST PRIORITY LIFE INSURANCE COMPANY, INC.; HIGHMARK INC. f/k/a HIGHMARK HEALTH SERVICES; HM HEALTH INSURANCE COMPANY d/b/a HIGHMARK HEALTH INSURANCE COMPANY; HIGHMARK BCBSB INC.; HIGHMARK WEST VIRGINIA INC.; HIGHMARK SELECT RESOURCES INC.

Blue Cross & Blue Shield of N.C. v. United States, No. 16-651-LKG

(Fed. Cl. filed June 2, 2016):

Plaintiff: BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA

Moda Health Plan, Inc. v. United States, No. 16-649-TCW

(Fed. Cl. filed June 1, 2016):

Plaintiff: MODA HEALTH PLAN, INC.

Land of Lincoln Mutual Health Ins. Co. v. United States, No. 16-744-CFL

(Fed. Cl. filed June 23, 2016):

Plaintiff: LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY

Maine Community Health Options v. United States, No. 16-967-JFM

(Fed. Cl. filed Aug. 9, 2016):

Plaintiff: MAINE COMMUNITY HEALTH OPTIONS

New Mexico Health Connections v. United States, No. 16-1199-EGB

(Fed. Cl. filed Sept. 26, 2016)

Plaintiff: NEW MEXICO HEALTH CONNECTIONS

BCBSM, Inc. v. United States, No. 16-1253-MCW

(Fed. Cl. filed October 3, 2016)

Plaintiff: BLUE CROSS AND BLUE SHIELD OF MINNESOTA